IN THE HIGH COURT OF JUDICATURE AT BOMBAY
SIDE JURISDICTION
CRIMINAL APPLICATION NO.495 OF 2006
IN
CRIMINAL WRIT PETITION NO.1793 OF 2006

Shri Gulab Mohammed Maladar ...Applicant.
V/s.
The Forest Officer & Ors. ...Respondents.

Mr.Dundapa B. Patil with Ms.Meenakshi D. Patil, advs. for the Applicant.

Mr.Y.S.Shinde, APP for the Respondent/State.

CORAM: J.H.BHATIA, J.
DATE : 21st April, 2007.

P.C.:

1. Heard Mr.D.B.Patil the learned counsel for the applicant and Mr.Shinde the learned APP for the State.

2. To state in brief, truck no.MH-09-Q-6655 belonging to the applicant came to be seized on 7-10-2005 under a panchanama by the Assistant Conservator of Forests on the allegation that on 15 fake passes certain prohibited forest wood was transported by this truck by Inas Augustin, who had engaged the truck of the present applicant for transportation of wood of Amruta trees during the period from 12/1/2003 to 18/1/2004. These facts were disclosed to the Forest Officer in the year 2005. Later on, by order dated 1-2-2006, Authorised Officer and the Assistant Conservator of Forest, Kolhapur confiscated the said

truck under Section 61(d) of the Forest Act. Appeal filed by the present applicant also came to be dismissed on 3.7.06 by the learned Additional Sessions Judge, Gadhinglaj. That order is challenged in Writ Petition No.1793 of 2006. The writ petition is already admitted.

3. By this application, the applicant seeks the said truck to be released pending final hearing and disposal of the writ petition. The learned counsel for both the parties informed that in December, 2006 criminal case has been filed against the present applicant and Inas Augustin under the Forest Act. Admittedly the truck was not seized while carrying away any forest wood or produce. The learned counsel for the applicant placed reliance upon **The State Of Maharashtra and another v. Kisan Genu Pawar 1991(2) Bom.C.R.167** wherein it was held that when the seizure of the truck was made only on the basis of statement made by certain persons and not while actually transporting forest produce, confiscation of vehicle is very harsh and serious penalty. Whether confiscation is justified or not can not be decided at this stage but the fact remains that the criminal case is yet to be decided. Similarly writ petition is already admitted and it may take sometime to dispose off that writ petition. If the truck, which is already very old, remains in the custody

of forest officer and in the open, it is likely to be further rusted or damaged. Possibly by the time writ petition is decided, it may become only a junk. To avoid such situation, it will be in the interest of justice to release the vehicle to the applicant on giving necessary security.

4. Truck bearing no.MH-09-Q-6655 be released in favour of the applicant on his executing bond of Rs.2 lakhs with the condition that he shall not create any third party interest nor shall transfer the said truck to any other person nor he shall modify the same pending the writ petition no.1793 of 2006. He shall file undertaking to produce the truck before the trial Court or any other Court, as and when may be directed. Bond to the above effect be executed before the trial Court.

(J.H.Bhatia, J.)